

SERVICE DATE – LATE RELEASE AUGUST 8, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35160

OREGON INTERNATIONAL PORT OF COOS BAY—FEEDER LINE APPLICATION—
COOS BAY LINE OF THE CENTRAL OREGON & PACIFIC RAILROAD, INC.

Decided: August 8, 2008

On August 1, 2008, the Board served a decision in which it accepted for consideration the Oregon International Port of Coos Bay's (the Port's) feeder line application under 49 U.S.C. 10907 to acquire 111.016 miles of Central Oregon & Pacific Railroad, Inc.'s (CORP's) Coos Bay Line between milepost 763.130, near Cordes, OR, and milepost 652.114, near Danebo, OR. In the same decision, the Board announced a procedural schedule for the proceeding.

On August 4, 2008, CORP filed a motion for waiver of certain Board regulations in order to modify the deadlines for discovery responses, motions to compel, and replies to motions to compel. CORP asserts that the modifications are necessary to afford it a reasonable opportunity to pursue discovery.

In its August 6, 2008 reply, the Port states that with one exception it does not object to CORP's proposed modification of the discovery deadlines. The Port notes that it sought discovery from CORP on July 11, 2008, some of which CORP has yet to provide because there is no protective order in this proceeding. The Port requests that the Board waive the time requirements of 49 CFR 1114.31(a) as it applies to any previously requested discovery that was not produced due to the absence of a protective order as if it were requested on the date the Board serves a decision addressing this issue.¹ The Port represents that CORP does not object to this refinement of CORP's initial proposal.

Based on the consent of the parties, and for good cause shown, the discovery deadlines set forth in Board regulations at 49 CFR 1114.26, 1114.30 and 1114.31(a) are modified as follows:

1. Answers and objections to interrogatories and requests for production of documents will be due seven (7) days after service of the discovery requests on a party.

¹ In its August 6, 2008 reply, the Port specifically requests this relief to become effective when the Board serves its decision on the motion for re-designation of certain information in AB-515 (Sub-No. 2). The Board will not address that issue here, though a decision is expected on that issue soon.

2. If a party fails to answer, gives incomplete answers, or fails to produce requested documents, the party seeking discovery may file a motion to compel within three (3) days of the failure.
3. A reply to a motion to compel may be filed within two (2) days.
4. Any discovery requested in this proceeding prior to the service date of this decision that was withheld due to the lack of a protective order will be treated as though it were requested on the date this decision is served.

To address the lack of a protective order in this proceeding, CORP filed, on August 4, 2008, a request to expand the protective order in Central Oregon & Pacific Railroad, Inc.—Abandonment and Discontinuance of Service—in Coos, Douglas and Lane Counties, OR, AB-515 (Sub-No. 2),² to encompass this proceeding. The parties have consented to this extension of the protective order. The protective order currently in place in AB-515 (Sub-No. 2) will be adopted in this proceeding, effective on the service date of this decision.

Finally, the Board notes the parties' cooperation in agreeing to the modifications we adopt here; given the expedited schedule for adjudicating this case, we expect the parties to continue to work to resolve discovery issues cooperatively.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CORP's request to expand the protective order of AB-515 (Sub-No. 2) to apply to this proceeding is granted.
2. CORP's motion for waiver of the Board's regulations at 49 CFR 1114.26, 1114.30, and 1114.31(a) is granted.
3. The discovery deadlines are modified as set forth in this order.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary

² On July 14, 2008, CORP filed for authority to abandon the Coos Bay Branch between milepost 669.0 near Vaughn, OR, and milepost 763.13 near Cordes, OR, and to discontinue service over the segments of the Coos Bay Subdivision that are leased by it. The Board is processing the abandonment and feeder line applications concurrently.